American Federation of Television and Recording Artists, Portland Local (KGW Radio) *and* Peter Weissbach. Cases 36–CB–1491 and 36–CB–1523

March 4, 1999

ORDER DENYING MOTION

BY CHAIRMAN TRUESDALE AND MEMBERS FOX, LIEBMAN, HURTGEN, AND BRAME

On January 28, 1999, the National Labor Relations Board issued a Decision and Order in this proceeding.[1] On February 2, 1999, the Charging Party filed a motion for partial reconsideration of the Board's Decision and Order. In support of his motion, the Charging Party contends that the Board erred in holding that the Respondent could meet its disclosure obligation to him by providing information concerning expenditures by its parent union, i.e., supported by a "local presumption," as an alternative to providing information on its own expenditures verified by an independent accountant.

The Board having duly considered the matter,

IT IS ORDERED that the Respondent's Motion for Partial reconsideration is denied as lacking in merit.[2]

MEMBER BRAME, dissenting.

I would grant the Charging Party's Motion for Partial reconsideration for the reasons stated in my dissent in this case.

[1] 327 NLRB No. 97.

[2] The Charging Party refers, inter alia, to a memorandum issued August 17, 1998, by the Board's Acting General Counsel to support his motion. The memorandum set forth guidelines to Regional Directors and other Regional Office employees concerning the processing of cases implementing the Supreme Court's *Communications Workers v. Beck* decision, 487 U.S. 735 (1988). The Charging Party cites to the portion of the memorandum that refers to a charging party fee objector's burden of presenting sufficient evidence to support a charge alleging improper agency fee charges. The Charging Party contends it would be effectively impossible for an objector to meet this burden if the Board's approval of the use of the local presumption is not reconsidered and reversed. We note that the Charging Party's obligation to provide evidentiary support for a charge in order to initiate an investigation by the General Counsel was not at issue in our decision. Such matters involve prosecutorial discretion, and, as such, are exclusively the province of the General Counsel under Sec. 3(d) of the Act. See, e.g., *NLRB v. Commercial Workers Local 23*, 484 U.S. 112, 117–118, 124–125 (1987); *New Otani Hotel & Garden*, 325 NLRB 928, 938 (1998); and *George Joseph Orchard Siding, Inc*., 325 NLRB 252, 253 (1998). Further, we note that the Acting General Counsel's memorandum predates the issuance of our decision here approving the use of the local presumption. Although the Board addressed the use of the local presumption in a prior case, *California Saw & Knife Works*, 320 NLRB 224 (1995), enfd. sub nom. *Machinists v. NLRB*, 133 F.3d 1012 (7th Cir. 1998), cert. denied sub nom. *Strang v. NLRB*, 525 U.S. 813 (1998), the Acting General Counsel's memorandum does not discuss how the General Counsel will investigate charges supported by locally presumed documentation. In any event, there is no indication that the General Counsel will not fully investigate charges, as appropriate, filed by objectors who have been given locally presumed figures. Finally, if the Charging Party forsees such a problem, it is appropriate to take up the matter with the General Counsel.

Member Hurtgen notes that, in any event, the Board's decision in the instant case was simply that the Union's use of a local presumption is not itself unlawful. The Board did not pass on whether a union can rely solely on a local presumption as a defense to a charge of seeking to collect an improper amount of dues. If there is such a charge, the General Counsel will investigate it, and will determine, under Sec. 3(d), what evidence is relevant and necessary to defend against such a charge